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 Summit Creditors' Trust, Metropolitan Mortgage &  
 Securities Co., Inc., and Summit Securities, Inc.

UNITED STATES BANKRUPTCY COURT  
 EASTERN DISTRICT OF WASHINGTON

In re:	)	Jointly Administered Under:
	)	No. 04-00757-W11
METROPOLITAN MORTGAGE &	)	Chapter 11
SECURITIES CO., INC.,	)	
	)	<b>FINDINGS OF FACT AND</b>
	)	<b>CONCLUSIONS OF LAW RE:</b>
Debtor.	)	<b>ORDER AUTHORIZING</b>
	)	<b>COMPROMISE OF CLAIMS,</b>
	)	<b>APPROVING SETTLEMENT</b>
In re:	)	<b>AGREEMENT WITH</b>
	)	<b>PRICEWATERHOUSECOOPERS,</b>
SUMMIT SECURITIES, INC.,	)	<b>LLP, BARRING THIRD-PARTY</b>
	)	<b>CLAIMS FOR CONTRIBUTION</b>
	)	<b>OR INDEMNITY AGAINST</b>
	)	<b>PRICEWATERHOUSECOOPERS,</b>
Debtor.	)	<b>LLP, AND SHORTENING TIME</b>
	)	

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Findings of Fact and Conclusions of Law re: Order Authorizing Compromise  
 of Claims, Approving Settlement Agreement, Barring Third-Party Claims  
 for Contribution or Indemnity, and Shortening Time  
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1           **THIS MATTER** came on regularly for hearing upon the Motion (the  
2 “Motion”) filed by Metropolitan Mortgage & Securities Co., Inc. and the  
3 Metropolitan Creditors’ Trust (collectively, “Metropolitan”) and Summit  
4 Securities, Inc. and the Summit Creditors’ Trust (collectively, “Summit”)  
5 (Metropolitan and Summit collectively, the “Movants”) for an Order Authorizing  
6 Compromise of Claims, Approving Settlement Agreement with  
7 PricewaterhouseCoopers, LLP, Barring Third-Party Claims for Contribution and  
8 Indemnity Against PricewaterhouseCoopers, LLP, and Shortening Time. Pursuant  
9 to the Motion, Movants seek an Order barring certain claims for contribution and  
10 indemnity that might be asserted against PricewaterhouseCoopers, LLP (“PwC”).  
11 Movants request entry of such an Order pursuant to a Settlement Agreement they  
12 have entered into with PwC to resolve disputed claims that Movants asserted  
13 against PwC in litigation captioned *Metropolitan Creditors’ Trust, Metropolitan*  
14 *Mortgage & Securities Co., Inc., Summit Creditors’ Trust, and Summit Securities,*  
15 *Inc. v. PricewaterhouseCoopers, LLP*, Case No. CV-05-290-FVS (the  
16 “Litigation”).

17  
18 Pursuant to Bankruptcy Rule 7052, made applicable to this proceeding  
19 pursuant to Bankruptcy Rule 9014, the following findings of fact shall be  
20 construed as conclusions of law when appropriate, and with all capitalized terms

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1 not otherwise defined herein to be defined as set forth in the Settlement Agreement  
2 filed in connection with the Motion;  
3

4 NOW THEREFORE, the Court makes the following Findings of Fact:

5 1. In compliance with RCW § 4.22.060(1), the Movants properly  
6 transmitted notice of the Motion, including entry of the proposed bar order, on all  
7 known persons with potential claims for contribution and indemnity against PwC.  
8

9 2. A reasonable opportunity to object and be heard (“Notice and  
10 Hearing”) with respect to the Motion and the relief requested therein has been  
11 afforded to all persons served with notice.  
12

13 3. The Notice and Hearing constituted the equivalent of a reasonableness  
14 hearing in accordance with the requirements of RCW § 4.22.060(1).  
15

16 4. The Court has considered the factors applicable under Bankruptcy  
17 Rule 9019 in assessing the fairness, reasonableness and adequacy of the Settlement  
18 Agreement. In particular, the Court has considered:  
19

- 20 • The probability of success in the litigation – the complex facts  
21 underlying the claims and the defenses that would be raised at trial of  
22 the Litigation and the uncertain nature of its outcome make this factor  
23 weigh in favor of finding the settlement is reasonable;
- 24 • The complexity of the litigation and the expense, inconvenience, and  
25 delay – each of these factors militates in favor of approving the  
26 settlement as reasonable, particularly the balance of a substantial  
27 assured recovery now as against uncertain recovery after further  
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lengthy and expensive proceedings in the Litigation and the possibility of an appeal even after conclusion of the trial;

- The paramount interest of the creditors and a proper deference to their reasonable views – the Court notes that the Trusts have previously approved the Settlement Agreement and seek approval of the proposed order approving Settlement Agreement and barring third-party claims for contribution or indemnity against PricewaterhouseCoopers, LLP.

5. The Court has also considered the factors applicable under RCW 4.60.060 in assessing the fairness, reasonableness and adequacy of the proposed settlement. In particular, the Court has considered:

- The releasing person's damages and the merits of the releasing person's liability theory – the facts concerning both the amount of damages and the elements of the underlying claim against PwC are complex and contested, and the Court presiding in the Litigation has expressed concerns over issues relating to Movants' allegations of causation and damages, so this factor weighs in favor of reasonableness.
- The merits of the released person's defense theory – PwC would have vigorously asserted defenses at trial, as to which the facts are complex and contested, so this factor weighs in favor of reasonableness.
- The risks and expenses of continued litigation – as noted above, continued litigation would be complex, lengthy, and expensive with an uncertain outcome.
- Evidence of bad faith, collusion, or fraud – the record before the Court amply demonstrates that this settlement was the result of good faith, arm-length and contested negotiations conducted by qualified counsel with the assistance of a mediator.
- The extent of the releasing person's investigation and preparation of

1 the case – the settlement occurred on the eve of trial, after the parties  
2 had completed all discovery (which was very significant) and had  
3 prepared their cases for trial.

- 4 • The interests of the parties not being released – no other persons or  
5 entities were parties to the Litigation other than Movants and PwC.  
6 Moreover, no parties who would be affected by the order have  
7 objected to its entry.

8 6. The Court's consideration of these factors leads it to conclude that the  
9 proposed settlement was entered into in good faith and is a fair, adequate and  
10 reasonable settlement of the released claims.  
11

12 WHEREFORE, having entered the foregoing Findings of Fact, the Court  
13 hereby makes the Conclusions of Law set forth hereafter. To the extent any of the  
14 following Conclusions of Law constitute Findings of Fact, they are adopted as  
15 such.  
16

17 1. The Court has subject matter jurisdiction over the claims being  
18 released against PwC and the authority to determine the reasonableness of the  
19 settlement pursuant to Bankruptcy Code §105 and Bankruptcy Rules 7016 and  
20 9019.  
21

22 2. The factors considered by the Court in assessing the fairness,  
23 reasonableness and adequacy of the proposed settlement are factors applicable  
24 under Bankruptcy Rule 9019.  
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27

1           3.     The factors considered by the Court in assessing the fairness,  
2           reasonableness and adequacy of the proposed settlement are factors applicable  
3           under RCW 4.60.060.  
4

5           4.     The Settlement Agreement was entered into in good faith and is a fair,  
6           adequate and reasonable settlement of the released claims and is sufficient to  
7           discharge PwC from all such claims. PwC is entitled to be discharged from  
8           liability from third parties for contribution or indemnification or any other claims  
9           where the claimant's injury is liability to the Movants, as provided under RCW  
10          4.60.060.  
11

12          5.     Movants have shown under applicable law that an Order should be  
13          entered providing that all persons or entities who are not parties to the Settlement  
14          Agreement are permanently barred, enjoined and restrained from commencing,  
15          prosecuting or asserting any claim against PwC, however styled, whether legal or  
16          equitable, known or unknown, whether for indemnification or contribution or  
17          otherwise denominated (including claims for breach of contract or  
18          misrepresentation), where the claimant's injury is the claimant's liability to the  
19          Movants and where the claim is based on any claims released by the Movants  
20          pursuant to the Settlement Agreement, including, without limitation, any claim in  
21          which such non-settling party seeks to recover from PwC (1) any amounts that  
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1 such non-settling party has paid, become liable to pay, or may become liable to pay  
2 in any proceeding commenced by Movants against such non-settling party and in  
3 any settlement with Movants based on claims Movants have released pursuant to  
4 the Settlement Agreement, or (2) any costs, expenses, or attorney fees that a non-  
5 settling party has incurred or may incur in defending against any such claim  
6 asserted against it by Movants (hereafter "Barred Claims"), and further that all  
7 Barred Claims should be extinguished, discharged, satisfied and made  
8 unenforceable.

12 6. Because non-settling parties are barred from asserting any Barred  
13 Claims against PwC, any final verdict or judgment entered in favor of Movants  
14 against a non-settling party in a proceeding brought against it by the Movants,  
15 based on claims that would have given rise to a right by such non-settling parties to  
16 assert Barred Claims but for the terms of the Order, should be reduced by the  
17 amount, if any, that such non-settling party can prove it would have been entitled  
18 to recover from PwC under a Barred Claim as determined by and provided for  
19 under the law applicable to any such Barred Claims.

23 7. The proposed Order Authorizing Compromise of Claims, Approving  
24 Settlement Agreement with PricewaterhouseCoopers, LLP, Barring Third-Party  
25 Claims for Contribution and Indemnity Against PricewaterhouseCoopers, LLP,  
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1 and Shortening Time, submitted concurrently herewith, is substantially in the form  
2 attached to the Movants' Memorandum In Support Of Motion For Order  
3  
4 Authorizing Compromise Of Claims, Approving Settlement Agreement With  
5 PricewaterhouseCoopers, LLP, And Establishing Bar Order as Exhibit 3, and  
6  
7 should be entered.

8  
9 Presented by:

10 SUSMAN GODFREY L.L.P.

11 /s/ Parker C. Folse, III

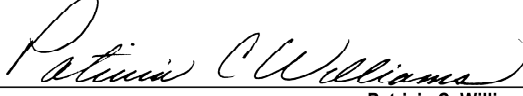
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14 Securities Co., Inc., the Metropolitan  
15 Creditors' Trust, Summit Securities, Inc.,  
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16 DAVIDSON ❖ MEDEIROS

17 /s/ Barry W. Davidson

18 Barry W. Davidson, WSBA No. 07980  
19 Attorneys for Metropolitan Mortgage &  
20 Securities Co., Inc., the Metropolitan  
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Patricia C. Williams  
Bankruptcy Judge

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